

The Montana citizen's Guide to the Courts



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Helping the public navigate through . . .

City Courts • Municipal Courts • Justice of the Peace Courts
State District Courts • Montana Supreme Court
U.S. District Court for Montana • U.S. Bankruptcy Court
9th Circuit Court of Appeals • U.S. Supreme Court
and other state and federal courts



Published by the State Bar of Montana, with help from Montana attorneys,
judges, state officials, and a generous grant from Humanities Montana

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A Guide to Montana Courts

The courts can become involved in many aspects of a person's life. You could encounter a legal problem at work, at home, with family, or in the outside community. The United States and Montana constitutions give people rights and freedoms. Sometimes the only way that you can protect your rights is by going to court. It is also important to know that some problems are not legal, and do not belong in court.

This guide for the Montana public explains how the courts and legal system work in our state. It also discusses some ways that problems can be solved outside of court. We hope that this guide will help Montanans better understand how to use the Montana Court system, as well as appreciate its role in our community.

This guide is merely a starting point. There is, of course, much more to learn. The resource guide on the last pages of this book lists resources on the Internet as well as book resources and contact information for agencies.

How is government set up?

In Montana, the state government is modeled after the federal government. Both have three branches:

- The *legislative branch* is made up of Congress at the federal level and the Montana Legislature at the state level. The legislative branch makes laws.
- The *executive branch* is headed by the President at the federal level and the Governor at the state level. The executive branch carries out the laws passed by the legislative branch.
- The *judicial branch* is the court system. The judicial branch decides what the laws mean and how the laws should be applied to a given set of facts.

Each branch has certain powers and can control some aspects of the other branches' powers. Each branch has limits on what it can and cannot do.

The three branches create a constitutional system known as *checks and balances*. This means that, although each branch is formally separate from the other two, the state and federal constitutions require cooperation and establish a certain tension among the branches. These checks and balances are meant to ensure that no single branch ever gains too much power.

Federal laws, for example, are passed by Congress and signed by the President. Montana state laws are passed by the Montana Legislature and signed by the Governor. The judicial branches of federal and state government have the authority to decide the

constitutionality of laws and resolve other disputes, but the judicial branch depends upon the executive branch to enforce court decisions.

The executive (President or Governor) can veto laws that a legislative body passes, but the legislative branch can override a veto with a two-thirds majority vote. Even if the legislative and executive branches agree on a law, the courts may decide that it violates either the Montana or the United States constitution.



What do courts do?

Without courts, we would have no way to protect our rights and freedoms.

A court settles disputes brought before it. It decides – using evidence brought to a judge or jury, or both – what happened and who was responsible: Did John Smith turn left in front of Jane Black causing the accident, or did she run the red light? Courts also decide if someone committed a crime and what his punishment should be: Did Ted Sanderson steal his neighbor's tools?

A court listens to each side's evidence and

arguments. This is called the *adversarial process*. Once the court has heard each side's case, it determines what actually happened. The court then applies the law and constitution to the facts in order to make its decision.

What are the types of law?

Civil law

Civil law deals with conflicts between individual entities, sometimes with money at stake, as opposed to criminal acts that affect society as a whole and may result in imprisonment.

A civil case starts when a person, organization, business, or governmental entity files a complaint claiming that another person or organization failed to carry out a legal obligation.

There are several different types of cases that fall under civil law, including tort claims (lawsuits), administrative law, contracts, elder law, family law, estates, and property law. Civil law remedies may include the payment of money by one side to the other, or a requirement that one side specifically perform a task it is deemed legally obligated to perform.

Criminal law

Criminal law exists to protect society as a whole. This is because criminal acts not only harm the individual people who are victimized, but also harm the community.

There are two general categories of crime: *misdemeanors* and *felonies*.



Misdemeanors are considered less serious offenses, although the consequences of conviction can be quite severe. In Montana, most misdemeanors are punishable by a maximum fine of \$500 and/or up to six months in jail.

However, there are some misdemeanors where the punishment is greater. Other possible punishments

include, but are not limited to, loss of a driver's license, hunting license, or professional license, community service, probation, education courses, counseling, or chemical dependency treatment.

Felonies are more serious crimes with more serious punishments than misdemeanors. Felonies are crimes where a person can be sentenced to

prison for more than one year. Some examples of felonies include murder, arson, and rape.

Both state and the federal governments have laws that define certain acts, such as murder, as a crime. Some common criminal laws include DUI (driving under the influence), MIP (minors in possession of alcohol or tobacco), and traffic tickets. In these definitions of criminal acts, they specify certain kinds of punishment that can be applied if a person commits one of these acts.

The state, through a prosecutor such as a county attorney, makes allegations (charges) against an individual of committing a crime. If a person is a victim of a crime, that person might be a witness for the prosecution in a criminal case. The victim does not prosecute the criminal case and does not have the right to decide if the state will prosecute the criminal. However, in some cases, the victim may also have grounds for a civil action against the person or be entitled to restitution as part of a convicted person's sentence.

For more information on criminal law, see:

www.expertlaw.com/library/criminal/criminal_charges.html

How are the courts set up?

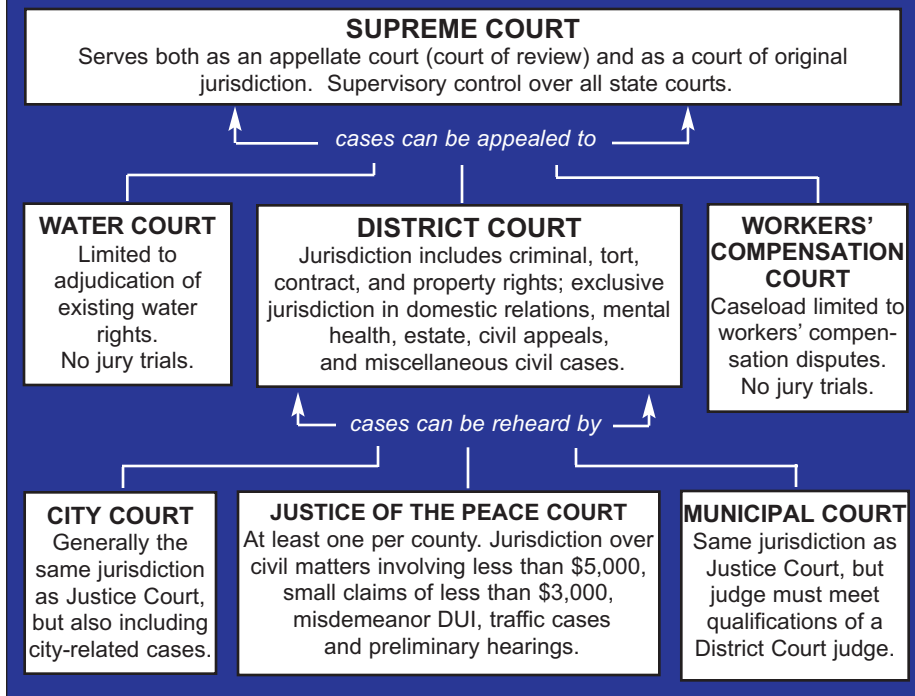
In Montana there are both state and federal courts. Federal courts are established by the United States Constitution and the U.S. Congress. State courts are established by the Montana Constitution and the Montana Legislature.

Before a court can hear a case, or "exercise its jurisdiction," certain conditions must be met. First, under the Constitution, federal courts exercise only "judicial" powers. This means that federal judges may interpret the law only through the resolution of actual legal disputes, referred to in Article III of the Constitution as "Cases or Controversies." A court cannot attempt to correct a problem on its own initiative, or to answer a hypothetical legal question.

Montana court system

The Montana Supreme Court, state district courts, and courts of limited jurisdiction make up the basic structure of the Montana judicial system. It is overseen by the Montana Supreme Court, administered by the state Court Administrator's Office, and funded by the Legislature. There are also specialty courts that decide specific types of issues. And, there are certain problems that can be resolved by administrative tribunals (hearing officers) that act in the same fact-finding role as a regular trial court.

MONTANA COURT STRUCTURE



A tribal court system operates on each of Montana's seven Indian reservations; it reflects the tribe's sovereignty and is not part of the Montana court system.

Trial courts hear evidence and decide the facts of the case. *Appellate courts* decide appeals of trial court decisions on legal questions, or questions that involve interpretation of a law.

In explaining each level of court in the Montana system, we start with the local level and work up to the Supreme Court level.

Local courts

Most Montanans will encounter the Montana court system through a city- or county-based court of limited jurisdiction.

Courts of limited jurisdiction are part of the state court system, but can handle only a limited type of case. The courts of limited jurisdiction in Montana are:

- *Justices of the peace* (62 in Montana; some justice courts handle cases for nearby towns). Justices of the peace do not have to be lawyers, and they are elected unless appointed to fill a vacancy. No transcripts are kept of justice court proceeding

- *Justice courts of record* (3 in Montana). The same as justice courts, except that transcripts are kept of court proceedings. There are five judges who serve in justice courts of record – two in Cascade

County, one in Lewis & Clark County, and two in Flathead County. The county determines if a justice court will be a court of record.

- *City courts* (81). City courts handle cases dealing with violation of city ordinances and amounts up to \$5,000. City court judges do not have to be lawyers. They may either be elected or appointed, depending on the city.

- *Municipal courts* (5). Municipal courts' jurisdiction corresponds with state district court jurisdiction, and municipal courts do not handle cases dealing with city ordinances. Municipal courts can handle disputes involving up to \$7,000. Applications for search warrants and complaints charging the commission of a felony may be filed in municipal court.

The municipal court judge has the same jurisdiction and responsibility as a justice of the peace, including holding preliminary hearings. The city attorney may initiate proceedings charging a felony if the offense was committed within the city limits, but the county attorney takes charge of the action if information is filed in district court.

Municipal court judges must be lawyers, and are elected unless appointed to fill a vacated position.

Judges in courts of limited jurisdiction serve for four-year terms.

Although there are some differences, justice, city, and municipal courts operate on roughly the same level as one another. They all have jurisdiction over misdemeanor criminal cases, fish and game violations, and ordinance violations. They also handle civil cases for money damages involving amounts up to \$7,000 and orders of protection. For cases involving youths, they handle only minor in possession of alcohol or tobacco, gambling, fish and game, and traffic offenses.

The total caseload of justice of the peace courts is nearly 10 times greater than that of state district courts.

Usually, courts of limited jurisdiction are not courts of record. This means that there is no recording, either by a court reporter or digitally, of the hearings. But, municipal courts and justice courts of record are courts of record, and court proceedings are recorded.

Trials can be decided by a judge or a jury in

courts of limited jurisdiction. The right to a trial by jury is guaranteed in the U.S. and Montana constitutions. You may demand a jury trial in most types of cases; there are some types of cases, including parenting plans and bankruptcy where you cannot have a jury trial. Some juries, such as for misdemeanors, are made up of six jurors, and some, such as for felonies, are made up of 12 jurors.

Small claims courts

Small claims courts, usually handled by justices of the peace, are a quick and informal way to resolve disputes over small amounts of personal property or money. Small claims involve disputes about money or property valued up to \$3,000. Juries and lawyers are not necessary and the Rules of Evidence do not have to be followed.

For rules on the courts of limited jurisdiction, see http://montanacourts.org/library/mt_law.asp#work_court.

For information on small claims court, or instructions on how to bring small claims, see http://montanacourts.org/library/topics/civ_forms.asp#scf.



Jefferson County Courthouse in Boulder, Montana

State district courts

District courts cover more territory than city or justice courts – several counties each – and handle “bigger” cases.

Montana is divided into 22 judicial districts, with 56 district judges. District judges are elected for six-year terms by registered voters in each district, in non-partisan elections.

District courts are courts of general jurisdiction, meaning they handle all types of cases not specifically reserved to another court. As trial courts, they handle criminal cases, where an individ-

ual is charged with a felony, and most types of civil cases, including probate and divorce cases. District courts handle all cases where the State of Montana is sued.

A district court trial verdict can be handed down either by a judge or a jury. (For details on the jury-selection process, see Page 7).

District courts can also handle small claims cases and can act as *appeals courts* by handling appeals from the courts of limited jurisdiction and administrative judges.

Individuals who bring cases in district court must comply with several different types of rules. These include the Rules of Criminal Procedure, Rules of Civil Procedure, and the Uniform District Court Rules. In addition, every judicial district has its own local court rules.

For information on Montana district courts and for local district court rules, see <http://montanacourts.org>.

Montana Supreme Court

The Montana Supreme Court is made up of the chief justice and six associate justices. Justices are elected for eight-year terms and must be licensed to practice law in Montana.

The Montana Supreme Court has both *original* and *appellate* jurisdiction.

Appellate jurisdiction is when the Supreme Court receives cases that have already been decided by lower courts. If a party believes that the lower court’s decision was wrong, unconstitutional, or unfair, an appeal can be made to the Montana Supreme Court.

Original jurisdiction is when the court hears a case for the first time, as opposed to hearing a case that has already been tried by a lower court. The Supreme Court has original jurisdiction in limited types of cases, such as when an inmate requests to be released from prison while waiting for his trial. Original jurisdiction is also used by the Supreme Court when it wants to take supervisory control over a district court case that has not been decided. The Supreme Court may exercise original jurisdiction in a case that has not been through a district court if the case does not involve facts, but instead is a question about a law or the constitution. A recent example of the Supreme Court exercising original jurisdiction was a case involving a challenge to judges’ term limits. The Supreme Court also has the power to order a lower court or the government to do something.

The Supreme Court makes rules for all Montana court procedures, including how to submit paperwork, how to schedule hearings, and how hearings and trials will proceed. A court may be governed by several different sets of rules. The Supreme Court,



The Montana Supreme Court in 2009

trial courts, and specialty courts all follow different court rules. The Court also regulates Montana attorneys. (Also see Supreme Court Commissions on Page 15.)

For information on the Montana Supreme Court Rules, see <http://montanacourts.org>

Specialty state courts

Courts that decide specific types of issues are called *specialty courts*:

Youth courts

Youth courts handle the majority of cases where a juvenile is a party. Under the direction of the district court judge, the youth court staff manages all cases where a youth is charged with an offense under the Montana Youth Court Act.



There are 22 youth courts in Montana, one in each of the 22 judicial districts. Youth court staff includes a chief probation officer in each district, juvenile probation officers, and support staff.

Youth courts work under a *restorative justice* model where youths are held accountable for criminal behavior while also receiving appropriate services to assist them in developing necessary life skills.

Youth courts work hard to reduce the number of out-of-home placements of youths. Many youth courts have created early intervention programs targeting youths at high risk of committing crimes. These early intervention programs assist in reducing the number of out-of-home placements and allow youths to be treated and served within their home communities.

Juveniles usually enter the juvenile justice system through contact with law enforcement, although they may be referred to juvenile probation by other agencies and parents. Juvenile probation is an integral part of the youth court. Most referrals to the

youth court's juvenile probation office are in the form of a ticket accompanied by a report from law enforcement. Youth court may handle any referral except traffic and fish and game violations.

Youths referred to probation must appear in front of the juvenile probation officer with a parent or guardian to answer the allegations against them. Most youths will never see the youth court judge and will work solely through the youth court juvenile probation officer to resolve the ticket in what is referred to as the *informal process*.

If the referral moves forward to the county attorney and a petition is filed on the charges that the young person is being accused of, the youth will appear before the youth court judge in the *formal process*. Approximately 25 percent of the youths referred to juvenile probation each year are handled formally.

Young people who are found guilty of a crime can be punished with fees, mandatory community service, drug testing, and/or placement in an institution such as a drug treatment facility or therapeutic group home. The goal of youth court is to find ways to help youths and society by effectively working with young people when they enter the judicial system.

For more information, visit http://montanacourts.org/dcourt/youth_court/default.asp and see the reference guide in the back of this book.

Drug courts

Drug courts are created to address adult, youth, and family alcohol and drug dependency issues. Drug courts are found in both district courts and courts of limited jurisdiction. There are adult, family, drunk driving, and juvenile drug courts. In 2009, there were 20 such courts in Montana.

Drug courts require clients to enroll in treatment programs, provide urinalysis, attend self-help meetings, meet with case managers, and frequently attend court for status hearings. A comprehensive assessment is completed on all drug court participants in order to help resolve any bio-psycho-social problems that may be a barrier to becoming drug free, productive Montana citizens, including employment, training, and housing issues.

Water Court

The Montana Water Court has jurisdiction to determine among competing claimants who has the right to use water in Montana.

There is only the one Water Court, located in Bozeman, where the Chief Water Judge presides. Under him there are four district water judges, who have their own courts. There are 12 water masters who are attorneys supervised by the Chief Water Judge. The masters do the majority of

the adjudication work. Any objections to the findings of a master are referred to the Chief Water Judge or to a district water judge.

In Montana, to use either surface water or groundwater, a person is required to have a legal right to do so. The state Water Use Act of 1973 defines this as a *water right*. This does not mean you own the water. The State of Montana owns all waters in the state.

Water rights in Montana are property rights. They are protected by the U.S. and Montana constitutions just like any other property right. Water rights have value, and water users cannot be deprived of their property without due process of law.

Not everyone has a legal right to use water in Montana. The acquisition of water rights is based upon the *Prior Appropriation Doctrine* in Montana. The first person to perfect a water right on a source has seniority over the next person and so on.

The water court decides competing claims for water based on the Prior Appropriation Doctrine and the legal sufficiency of a claim. Water rights can be limited in various ways to allow someone to use only water that he has acquired a right for.

In Montana, a water user need only to put the water to a *beneficial use* to have a water right. A beneficial use is a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses. You can legally use city water delivered to your faucet because the city holds a water right. You don't have the right to drill a well in many Montana cities because you don't hold the groundwater rights.

The Water Court follows the same rules and laws of the local district court. In addition, the Water Court follows specific rules adopted by the Montana Supreme Court.

For more detailed information on the Water Court see:

- <http://leg.mt.gov/content/Publications/environmental/2008waterrights.pdf>
- www.courts.mt.gov/water/guidebook.pdf

Workers' Compensation Court

The Legislature created the Montana Workers' Compensation Court in 1975 to provide a forum for resolving disputes involving the Workers' Compensation Act and the Occupational



Disease Act.

The Workers' Compensation Court is a single court with statewide jurisdiction that holds trials in five cities: Great Falls, Missoula, Billings, Helena, and Kalispell. The Workers' Compensation Judge serves a six-year term and is appointed by the governor. The Workers' Compensation Judge must have the same qualifications necessary to hold the office of a district court judge.

The Workers' Compensation Act outlines the rules for how workers should be treated in Montana. The Workers' Compensation Court also hears cases involving other types of job-related disputes. The cases in Workers' Compensation Court generally involve work-related injury or disease.

The Workers' Compensation Court conducts trials statewide and decides requests for judicial review from final orders of the Montana Department of Labor & Industry. The Court is attached to the Montana Department of Labor & Industry for administrative purposes.

Decisions of the Court may be appealed directly to the Montana Supreme Court.

For the rules of the Workers' Compensation Court, see <http://montanacourts.org>.

The Workers' Compensation Act is found in the Montana Code Annotated at Section 39-71-101.

The Occupational Disease Act is located in Montana Code Annotated Section 39-72-101.

Where are Montana courts located?

Where a case is filed depends on many factors, including where a party lives or where an event occurs. A court must have jurisdiction or the right to hear a particular case. You can find the courts in Montana on the Montana Supreme Court website. The website has a court locator, with the map at <http://courts.mt.gov/locator> **and featured on the back cover of this guide**. This map is broken into counties and judicial districts.

The judicial districts are identified by color. Sometimes multiple counties fall within a single judicial district. On the website map, find your county and click on it, and you can see the contact information for all the different courts in your county.

If you have a question about which court would hear your case, you can call the Clerk of Court. Obtain the contact information for the Clerk of Court by clicking on the district on the locator map mentioned above or in the government pages of your phone book.

For more information on court locations in Montana, see the reference guide in the back of this book, and the map on the back cover.

Your right to a trial by jury

The right to a trial by jury is guaranteed in the United States and Montana Constitutions. You may demand a jury trial in most types of cases; there are some types of cases, including parenting plans and bankruptcy where you cannot have a jury trial.

Your obligations for jury duty

Juries may have six or 12 members, depending on the type of court case.

In Montana, there are several qualifications to be a juror:

- You must be 18 years of age.

- You must be a resident for at least 30 days in the city, town, or county where you are called to be a juror.

- You must be a citizen of the United States

- You cannot be a convicted felon whose civil rights have not been restored.

- You cannot

be convicted of a felony, high crime, or malfeasance in office, and not had your civil rights restored

In Montana, jurors are selected from a combined list of registered voters, licensed drivers, and Montana identification cards. For each court, a master jury list is created. You are required to serve on only one state panel per year. If you are notified that you are on two different state courts' master juror list, contact the Clerk of Court.

You will receive a notice and questionnaire if you are on this year's master jury panel. You must immediately send back the juror questionnaire. Follow the directions on this notice – some courts require you to tell them when you are going to be out of town so that they will not pick you for a particular trial.

There are only two reasons that will allow for permanent excusal from serving on a jury.

- You are permanently disabled. You must submit an affidavit from your physician; OR

- You are over the age of 70 and wish to be permanently excused.

Under limited situations you can be temporarily excused. You must send the court a notarized affidavit explaining one of the following:

- You are a nursing mother.

- Serving on the jury will cause you undue hard-

ship. There are limited reasons that a judge will excuse you.

- You will be temporarily unavailable due to a previously scheduled commitment.

As a case is set for jury trial, a panel is selected from the master panel. Individual notices are sent out requiring you to appear on a particular day. Most courts require you to contact them to let them know you received the notice.

When you report for jury duty, you will be assigned a particular case. The judge and the parties will ask you certain questions. This process is called *voir dire*, which means “speak the truth.” The purpose of *voir dire* is to make sure that each individual juror meets the basic qualifications of a juror and will impartially hear the issues. Sometimes the questions can seem very personal, but they are only intended to make sure that the parties have a fair trial. There are always more jurors called than will actually sit for a trial. An individual's excusal from jury duty is based on a number of reasons or perhaps “no reason” at all.

If you report for jury duty and are not selected, you will be reimbursed \$12. If you are selected for jury duty, you will be reimbursed \$25 per day. You should also receive mileage for your travel from your house to court.

Federal court system

The *United States Supreme Court* is the highest court in the nation.

Congress has established two levels of federal courts under the Supreme Court: the *U.S. district courts* and the *circuit courts of appeals*. Cases begin in district courts, and parties may appeal a district court's decision to a court of appeals.

Although the details of the complex web of federal jurisdiction that Congress has given the federal courts is beyond the scope of this brief guide, it is important to understand that there are two main sources of the cases coming before the federal courts: *federal-question jurisdiction*, and *diversity jurisdiction*.

In general, federal courts may decide cases that involve the United States government, the U.S. Constitution, federal laws – or controversies between states or between the United States and foreign governments. A case that raises such a “federal question” may be filed in federal court.

Examples of such cases might include a claim by an individual under a federal government program such as Social Security, a claim by the government that someone has violated federal laws,



or a challenge to actions taken by a federal agency.

A case also may be filed in federal court based on the “diversity of citizenship” of the litigants, such as between citizens of different states, or between United States citizens and those of another country. To ensure fairness to the out-of-state litigant, the Constitution provides that such cases may be heard in a federal court. An important limit to diversity jurisdiction is that only cases involving more than \$75,000 in potential damages may be filed in a federal court. Claims below that amount may only be pursued in state court. Moreover, any diversity jurisdiction case, regardless of the amount of money involved, may be brought in a state court rather than a federal court.

Justices of the U.S. Supreme Court, judges of the courts of appeals and the federal district courts, and judges of the Court of International Trade are appointed under Article III of the U.S. Constitution by the President with the advice and consent of the Senate. Article III judges are appointed for life, and can only be removed through impeachment.

Although there are no special qualifications to become a judge of these courts, those who are nominated are typically very accomplished private or government attorneys, judges in state or federal courts, magistrate judges, bankruptcy judges, or law professors. The judiciary plays no role in the nomination or confirmation process.

Each court in the federal system has a chief judge who, in addition to hearing cases, has administrative responsibilities relating to the operation of the court.



The federal courthouse in Missoula, Montana

U.S. district courts

The U.S. district courts are the trial courts of the federal court system. Within limits set by Congress and the U.S. Constitution, the district courts have jurisdiction to hear nearly all categories of federal cases, including both civil and criminal matters.

There is at least one federal district court in each state, the District of Columbia, and Puerto Rico. Each district also includes a U.S. bankruptcy court as a unit of the district court. Other federal courts include the U.S. Tax Court and other specialty courts authorized by Congress.

Montana has one federal district court with five divisional offices, located in Billings, Butte, Great Falls, Helena, and Missoula. There are three U.S. district judges, two senior judges (semi-retired federal judges who are called upon to take some federal cases), three federal magistrate judges (see details on magistrate judges below), and two part-time magistrate judges.

The Chief Federal Judge for Montana is selected on a rotating basis from the federal judges. The chief is in charge of the administration of the federal court. The federal Clerk of Court is located in Missoula at (406) 542-7260.

One United States attorney is appointed by the president to serve each judicial district as the federal prosecutor. This office prosecutes persons accused of violations of U.S. laws, prosecutes or defends civil actions brought by or against the United States, and appears on behalf of federal officials in cases filed against them while they are acting in their official capacities.

The Federal Defender's Office for the District of Montana provides legal representation to indigent criminal defendants in federal court.

U.S. circuit courts of appeals

The 94 federal judicial districts are organized into 13 circuits, each of which has a U.S. circuit court of appeals. A court of appeals reviews appeals of cases from the district courts located within its circuit, as well as appeals from decisions of federal administrative agencies. Montana is part of the 9th Circuit Court of Appeals, which is headquartered in San Francisco.

In courts of appeals, the facts are taken as found at the district court level, and what is at issue are questions of how the law is applied to these facts. Therefore, there are no jurors or witnesses. The lawyers for both sides are present, but the parties usually are not.

Magistrate judges

Magistrate judges are appointed by the district judges to eight-year terms and empowered to perform many of the duties previously performed only by district judges. The use of magistrate judges has eased the workload on district judges and provides the public with a speedier resolution of some court matters.

Bankruptcy courts

Federal courts, not state courts, have jurisdiction over all bankruptcy matters.

Through the bankruptcy process, individuals or businesses that can no longer pay their creditors may either seek a court-supervised liquidation of their assets, or they may reorganize their financial affairs and work out a plan to pay off their debts.

Bankruptcy cases are divided into different categories, called chapters, of Title 11 of the U.S. Code. The chapter is determined by the type of bankruptcy filed. Chapters 7 and 13 are filed by individuals, chapter 11 by businesses, and chapter 12 by farmers.

Bankruptcy judges are officers of the U.S. district courts and are appointed by the U.S. courts of appeals for 14-year terms.

Montana has one Bankruptcy Court, located in Butte, at (406) 497-1240.



The U.S. Supreme Court Building in Washington, D.C.

U.S. Supreme Court

The U.S. Supreme Court is the highest court in the nation. It consists of the chief justice and eight associate justices. Justices are nominated by the president, and then must be approved by the Senate.

After a federal circuit court decision, a party may request the U.S. Supreme Court to hear its case, which is called *petitioning for certiorari*. The U.S. Supreme Court then decides if it will consider the appeal. Most appeals are not accepted. The U.S. Supreme Court usually considers fewer than 100 cases per year out of the thousands of cases that parties ask it to consider.

Before a court can hear a case, or “exercise its jurisdiction,” certain conditions must be met:

- When there is an actual case or controversy, the plaintiff in a federal lawsuit also must have legal “standing” to ask the court for a decision. That means the plaintiff must have been aggrieved, or legally harmed in some way, by the defendant.

- The case must present a category of dispute that the law in question was designed to address, and it must be a complaint that the court has the power to remedy. In other words, the court must be authorized, under the Constitution or a federal law, to hear the case and grant appropriate relief to the plaintiff.

- The case cannot be “moot” – that is, it must present an ongoing problem for the court to resolve. The federal courts, thus, are courts of “limited” jurisdiction because the judges of the federal courts may only decide certain types of cases as provided by Congress or as identified in the Constitution.

Law on Montana’s Indian reservations

Tribal law and jurisdiction is complicated and varies based on:

- Who are the parties to the action (Indian or non-Indian).
- Where the act occurred (within Indian Country, outside of Indian Country, or fee or trust land within Indian Country).
- What type of action is involved (civil, criminal – again it varies depending on status of the parties and victim).
- Whether the act in question affects a tribe’s sovereignty (often balanced against state and federal interests).

In Montana, there are seven Indian reservations; each makes and enforces its own laws subject to any compacts with the state, or with federal laws and regulations. Tribal law varies based on how the tribal government was established (by treaty or executive order), the provisions of tribal constitutions, and tribal legislative enactments and administrative rules.

Each of the tribes located within Montana has its own tribal courts which operate in a manner similar to what takes place in federal or state district courts – but tribal courts also reflect the unique needs of each tribal culture.

Common areas of controversy between tribes, states, and the federal government include jurisdictional determinations, gaming activities, taxation issues, Indian Child Welfare Act matters, water rights, and hunting/fishing/gathering rights. A person’s ability to determine what forum has jurisdiction to hear a matter regarding tribal people, tribal lands, or tribal rights depends on analyzing a variety of factors. Since there are virtually no easy rules in federal Indian law – and tribal law varies from tribe to tribe – it is important to understand what legal principles apply to any given situation when evaluating whether a matter may be properly brought in the tribal judicial system.

Additional information about Indian law issues can be found at the following websites:

- www.Indianlaw.mt.gov
- Native American Rights fund at www.narf.org
- www.umt.edu/law/library/Research%20Tools/Tribal%20Law.htm
- <http://www.opi.mt.gov/> > Indian Education Tab
- Montana-Wyoming Tribal Leaders Council at www.mtwytlc.com

What is administrative law?

There are two areas of administrative law that may affect individual Montanans:

- Administrative rules or regulations.
- Administrative tribunals or hearings.

Rules or regulations expand upon laws passed by the Legislature, usually providing specific details to further interpret or carry out a law. They carry the force of law unless overturned by a court or by a change in the underlying law.

There are also numerous tribunals. An administrative tribunal is often called a hearings bureau or hearings office. Most state and federal agencies have a hearings office of some sort.

Some common situations where an individual may have a case before an administrative tribunal include tax appeals; Social Security, Food Stamps, and other benefits cases; employment disputes; medical malpractice claims, workmen's compensation; and discrimination cases.

Administrative rules

The Montana Legislature gives rulemaking authority to agencies. Administrative rules are sometimes called regulations.

At the national level, administrative rules are codified in the Code of Federal Regulations. In Montana, they are known as the Administrative Rules of Montana, or ARM.

Agencies also adopt administrative rules that describe the agency, its procedures, or practice requirements. Since administrative rules have the force of law, agencies must follow a comprehensive process to adopt or change a rule, including giving public notice and holding a public comment period.

The Montana Secretary of State's Office oversees the rulemaking process and works closely with all state agencies. Proposed rule changes, notice of public hearings, summaries of public comments received, and newly adopted rules are published in the *Montana Administrative Register* on a bi-weekly basis. The *Register* is updated quarterly to reflect and codify all new rules. The website for the state administrative rules is <http://sos.mt.gov/arm>.

The federal process is more complex, but proposed rules, hearings, public comment, and new rules are published in the *Federal Register*.

Appealing an administrative rule

When a member of the public is concerned about a proposed administrative rule, his first recourse is to provide public comment on the proposed rule, either in person at a hearing, or in writing. If the rule is adopted over his opposition, a legal action may be filed in state district court. However, in most cases, the rule will be upheld by the courts if it was adopted with proper legal process and was within the scope of the agency's statutory authorization.

People may also seek to overrule an administrative rule by requesting legislative action that expressly changes the underlying statute on which the rule was based.

Administrative hearings

Some problems cannot be heard in court until other solutions have been explored first. In some cases, these cases involve disputes over purely administrative law, rules, or regulations. An administrative tribunal, commonly known as a hearings bureau or hearings office, is authorized to hear substantive legal disputes. In some cases, this occurs because the knowledge required to make a determination is highly specialized, such as in tax or immigration law, while in other situations, such as disputes over unemployment insurance benefits, the cases are so numerous that a hearings bureau is tasked with decision-making power so as to not overburden the courts.

There are many different administrative tribunals at both the state and federal level. Most have their own operating rules. In Montana, most administrative hearings are governed by the Montana Administrative Procedures Act, sometimes supplemented by additional administrative rules. At the Federal level, similar statutes govern procedures.

The person who presides over an administrative hearing is usually called a *hearings officer* or a *hearings examiner*. These individuals have responsibilities similar to judges, in that they oversee the proceedings, issue subpoenas, rule on motions, hear evidence, and issue a decision at the conclusion of the proceedings. Sometimes a hearings officer is an attorney, but not always. In most cases, hearings officers are required to possess knowledge of the subject area over which they are presiding.

Anyone with a case before an administrative tribunal should treat it with the same care as a more formal court proceeding. These hearings may be your only opportunity to present evidence. An appeal of an administrative decision to a district court consists only of a review of the evidence presented at the administrative hearing. The district court reviews the decision for errors of law. Seldom is a new trial granted.



Judges and attorneys

To become a Judge . . .

All Montana Supreme Court justices and district court judges must be citizens of the United States, have lived in Montana for at least two years immediately before taking office, and must have been admitted to practice law in Montana for at least five years.

All municipal court judges are required to be licensed attorneys and have practiced in Montana for three years. All other judges in courts of limited jurisdiction are not required to be attorneys.

All judges of courts of limited jurisdiction must attend two training conferences each year and pass a certification test during each four-year term. If a judge does not attend a training conference, or does not pass the examination, he can no longer be a judge and the position becomes vacant. For each type of judge there are rules establishing what to do if a judge is unavailable or a position becomes vacant.

Judges' rights & responsibilities

The Montana Code of Judicial Conduct outlines rules and guidelines for judges to follow when doing their jobs. The Code also give members of the public a reference for what they have a right to expect from judges when in court.

The Montana Code of Judicial Conduct was adopted by the Montana Supreme Court on Jan. 1, 2009, replacing the old Montana Canons of Judicial Ethics. The new Code, and the order adopting it, is at http://fnweb.isd.doa.state.mt.us/idmws/custom/SLL/SLL_FN_BLOG.asp?IDMID=003798694. If a judge is found to have violated the Code of Judicial Conduct, the state's Judicial Standards Commission will recommend to the Montana Supreme Court a disciplinary action for the judge, which could include removal from office. The Commission is composed of two district court

judges elected by all district court judges, one attorney appointed by the Supreme Court, and two members of the public appointed by the governor.

Attorneys & the State Bar of Montana

The State Bar of Montana was created by the Montana Supreme Court in January 1975. The Court requires that anyone practicing law in the state has to be a member of the State Bar.

The Bar headquarters is located at 7 West 6th Ave, Suite 2B, in Helena, Montana. Phone is (406) 442-7760; e-mail is mailbox@montanabar.org. The State Bar's web site is www.montanabar.org.

The State Bar of Montana acts as a bridge between its members and the public by providing the following services:

- A Lawyer Referral Service, which helps members of the public find a lawyer for a particular legal problem. Call (406) 449-6577; or go to www.montanabar.org, click on For the Public > Get a Referral.

- Publication of pamphlets on a wide variety of legal subjects, including marriage and divorce, landlord-tenant law, small claims court, rights of clients, wills, and probate. Find the pamphlets at www.montanabar.org, click on Bookstore.

- Continuing legal education seminars, practice manuals, and ethics opinions for its lawyer members.

Services run by the State Bar that are used to deal with complaints from clients against lawyers include:

- A Fee Arbitration Program to settle fee disputes between an attorney and a client, without going to court. Go to www.montanabar.org > For the Public > Fee Arbitration.

- A Lawyers Fund for Client Protection, used to pay back part of the money that a client may have lost in cases where an attorney has improperly appropriated client funds. For more information, go to www.montanabar.org > For the Public > Lawyers' Fund for Client Protection.

How do you become a lawyer?

There are several requirements to becoming a lawyer in Montana. They are:

- Attend an American Bar Association accredited law school, and complete the full course of study.

■ Pass a character and fitness review. The review determines if attorneys who want to be admitted to the State Bar possess the necessary traits of character and fitness for the practice of law. "Fitness" is the assessment of mental and emotional health as it affects the ability of someone to be an attorney; "good moral character" refers to the qualities of fairness and honesty, and ability and willingness to act in accordance with the Montana Rules of Professional Conduct.

■ Pass the Montana Bar Examination, which tests the individual's knowledge of law and court procedure.

For the procedure on how to become an attorney in Montana, go to www.montanabar.org > *Admission to the Bar* > *Admission Rules*.

To read the guidelines of a character and fitness review, see: www.montanabar.org > *Admission to the Bar* > *Admission Rules* > *C&F Rules*.

Rights & responsibilities of attorneys

Practicing attorneys are subject to the Montana Rules of Professional Conduct. These rules outline the ethical guidelines that attorneys must follow in their work. They explain how attorneys should treat clients, other attorneys, and how they should act in court.

The State Bar requires all lawyers who are active members to take 15 hours of mandatory continuing legal education each year, which includes ethics training.

To see the Rules of Professional Conduct, go to: www.montanabar.org > *Legal Resources* > *Attorney Rules & Regulations*.

How attorneys are held accountable

The Montana Supreme Court has two groups that are in charge of disciplining lawyers, in the event that complaints are brought against them. These are the *Office of Disciplinary Counsel* and the *Commission on Practice*.

The Office of Disciplinary Counsel investigates and prosecutes citizen complaints against lawyers regarding their professional conduct. To file a complaint, call (406) 442-1648 or toll-free at (877) 442-1648. See the office's website at www.montanaodc.org

The Commission on Practice holds hearings on complaints it receives from the Office of Disciplinary Counsel, and makes recommendations to the Montana Supreme Court for discipline through Supreme Court orders.

There are nine lawyers and five non-lawyers on the Commission on Practice, all appointed by the Montana Supreme Court.

What is unauthorized practice of law?

Only attorneys licensed and admitted to practice law in the State of Montana may practice law in Montana.

Paralegals or legal assistants may offer legal help under the supervision of a licensed attorney. Some paralegals do have private businesses where they contract their services to attorneys, but paralegals may not give legal advice, accept cases, set or charge fees, appear in court, make legal decisions, or plan strategies of a case.

That being said, paralegals do play an important role in law offices and can assist clients while working under the direct supervision of an attorney.

Someone offering to prepare your paperwork may have little or no legal education and may cause irreparable harm by providing incorrect information, forms, and advice. The unauthorized practice of law is really a consumer protection issue. Clients have certain protections when they have problems with a lawyer, but there is little recourse for harm done by a nonlawyer. The Supreme Court's Commission on the Unauthorized Practice of Law has investigated complaints against former prisoners and untrained nonlawyers who have offered reduced cost "legal services."

For information on the Commission on the Unauthorized Practice of Law, to check whether someone is authorized to practice law, or to file a complaint against an unauthorized practitioner, go to:

- www.montanacourts.org/supreme/boards/unauth.asp.
- www.montanabar.org > *About the Bar* > *Frequently Asked Questions*.

● www.montanabar.org > *Bar Groups* > *Supreme Court Commissions* > *Commission on Unauthorized Practice*.

● The Clerk of Courts website is http://courts.mt.gov/dcourt/d_clerk.mcp

Montana Self-Help Law program

Montana's Self-Help Law Program provides legal information to individuals who wish to represent themselves in court without an attorney.

The Program, established by the Montana Supreme Court and funded by the Legislature, is an initiative to address the needs of individuals with noncriminal legal problems who cannot or choose not to be represented by an attorney.

The Self-Help Law Program provides these individuals with the information they need to go to court. It does not provide legal advice; rather, it directs individuals to legal resources.

There are three Self-Help Law programs in Montana; two are at the clerk of district court

offices in Billings and Kalispell. A third is located in Helena, at the State Law Library. There is also a part-time family law center in Missoula, at the district court.

There are free forms and easy-to-understand information covering many areas of law at:

- www.montanalawhelp.org
- At the State Law Library's site at <http://montanacourts.org/library/>



Settling differences out of court

Sometimes when you have a legal dispute, you can save some time and money by using *alternative dispute resolution*, or settling a dispute without going to court. Typically, when you settle your differences out of court the process is faster, less complicated, and cheaper than it would be in court.

The two main kinds of alternative dispute resolution are called *mediation* and *arbitration*. Usually you can choose to use one of these options even if a lawsuit has already been filed. Sometimes a judge will ask you to try alternative dispute resolution. Other times, judges are required to refer you to alternative dispute resolution, often mediation.

Because of their high success rate and efficiency, more and more people are turning to mediation and arbitration when they have a legal dispute. At the very least, it's important to know that they are options.

What is mediation?

Mediation is a process in which people negotiate their dispute with the help of a trained mediator. The mediator is an impartial person on whom the parties in a legal dispute can agree will be fair and helpful in the process.

The mediator's job is to help parties communicate and come up with creative, mutually beneficial, ways to resolve their dispute. The mediator is there to make sure that everyone gets a chance to talk and be

heard, and to create an environment that is safe, respectful, comfortable, and conducive to fair solutions. The mediator is not there to decide who is "right" or to make any decisions about the outcome of the negotiations; instead, the mediator's job is to help the process along.

Some people get help from a lawyer before they go to mediation, but this is not required. Mediations are confidential. Anything said or exchanged in a mediation cannot be used later in a court hearing if the mediation doesn't work out and the case ends up going to trial. Mediators are also bound by confidentiality: they cannot be forced to tell a court what happened in the mediation.

Some courts may require that you try mediation in good faith, though you are not required to come to an agreement.

For more about mediation go to:

- The Montana Mediation Association at www.mtmediation.org.
- The State Bar of Montana's Dispute Resolution Committee at www.montanabar.org under Bar Groups > Dispute Resolution Committee.

What is arbitration?

Arbitration, while also an alternative to going to court, is different from mediation. In the arbitration process there is an arbiter who, unlike a mediator, actually makes a decision on the legal dispute much like a judge would.

An arbiter is a neutral third party that parties in the legal dispute agree upon. Usually, parties to a dispute agree to a set of rules that define how an arbiter will be selected, how the case will proceed, and how the fees involved will be handled.

Once these things are decided and an arbiter (or arbiters) is chosen, an arbitration meeting is held. At the meeting, each side presents its case, including witnesses and evidence. Each side also is allowed to question the other side's witnesses. The arbiter then makes a final decision, which is usually binding.

A word of caution: if you use a binding arbitration process, you may not be able appeal it to a court afterwards if you do not get the result you want. Arbitration is most frequently used in labor and commercial disputes. Arbitration works a lot like a court trial, but it is often faster, cheaper, and less formal than a trial, and it is a good thing to consider when thinking about your legal options.

For more information on arbitration go to:

- The American Arbitration Association at www.adr.org/
- University of Montana Mediation Clinic at www.umt.edu/law/clinics/mediation.htm

Appendix I

Legal Resource Guide

Accredited law schools

www.abanet.org/legaled/approvedlawschools/alpha.html

American Bar Association Service Center

321 North Clark Street
Chicago IL 60654-7598
(312) 988-5522
(800) 285.2221
www.abanet.org/home.html

Admission to the State Bar of Montana

www.montanabar.org > Admission to the Bar

Bankruptcy Court

www.mtb.uscourts.gov
Mike Mansfield Federal Building & Courthouse
Room 303
400 N. Main St., Butte, Montana
(406) 497-1240

State Board of Tax Appeals

PO Box 200138
Helena MT 59620
1209 8th Ave., Helena MT 59620
(406) 444-2720
<http://stab.mt.gov/>

State Office of Consumer Protection

2225 11th Avenue
PO Box 200151
Helena 59620-0151
(800) 481-6896
(406) 444-4500
contactocp@mt.gov
www.doj.mt.gov/consumer/

Domestic Violence

National Domestic Violence Hotline: 1-800-787-3224
To find a local shelter/program, go to:
www.mcadsv.com/Members-all.html

Drug Court

Jeffery Kushner
Statewide Drug Court Coordinator
(406) 841-2949
jkushner@mt.gov

Elder Law

Aging Services
www.dphhs.mt.gov/sltc/services/aging/areaagenciesonaging.shtml

Aging Services Legal Service Provider

1-800-332-2272.
www.dphhs.mt.gov/sltc/services/aging/legal/index.shtml

Montana Judicial Branch

<http://courts.mt.gov>

Montana Legal Services

Helpline: 1-800-666-6899
Main Office: 616 Helena Ave. Suite 100
Helena MT 59601
(406) 442-9830
www.mtlsa.org/

Montana Law Help.Org

www.Montanalawhelp.org

Montana Mediation Association

503 1st Ave North, # 208
Great Falls MT 59401
(406) 727-8365
www.mtmediation.org/

Montana State Law Library

215 N Sanders St
Helena MT 59601
(406) 444-3660
<http://montanacourts.org/library>

Self-Help Law Program

courts.mt.gov > Supreme Court > Self-Help Law Program.

Sexual Assault

National Sexual Assault Hotline: 1-800-656-HOPE (4673)

State Bar of Montana

7 W 6th Ave., Suite 2B
Helena MT 59601
PO Box 577
(406) 442-7660
www.montanabar.org/

Office of Disciplinary Counsel (attorneys)

<http://montanacourts.org> > Supreme Court > Office of Disciplinary Counsel. Phone: (877) 442-1648

Appendix II

Montana Self-Help Law Program Sites

Billings: Full service self-help center located in the Yellowstone County Courthouse at 217 North 27th Street in Billings; (406) 869-3531.

Helena: Full service self-help center located in the State Law Library at 215 North Sanders Street in Helena; (406) 444-9300.

Kalispell: Full service self-help center located in the Flathead County Justice Center at 920 South Main Street on the 3rd floor.

Missoula: Family Law self-help center located in the Missoula County Courthouse at 200 West Broadway in Missoula; (406) 258-3428

The Self-Help Law Program provides assistance to self-represented litigants in civil legal matters (i.e. no assistance in criminal matters or matters arising from criminal proceedings, no assistance available to incarcerated persons, no assistance provided in appellate matters).

Appendix III:

Montana Supreme Court commissions

The Supreme Court is responsible for rulemaking and oversight of the administration of justice in Montana. Part of this administrative work is done through the various boards and commissions, including:

- Sentence Review Division
- Commission on Practice
- Commission on Courts of Limited Jurisdiction
- Judicial Standards Commission
- Commission on Unauthorized Practice

- Commission on Self-Represented Litigants
- Commission on Gender Fairness
- Board of Bar Examiners
- Commission on Character and Fitness
- Commission on Rules of Evidence
- Commission on Civil Jury Instruction Guidelines
- Commission on Criminal Jury Instructions
- Commission on Continuing Legal Education
- Equal Justice Task Force

This Guide's editors & contributors

This Guide is published by the State Bar of Montana with the aid of a \$3,000 grant from

Humanities MONTANA

an independent nonprofit organization dedicated to bringing the humanities, their insights and values, to the people of Montana, enriching the intellectual, cultural, and civic life of the state. See the group's website at *humanitiesmontana.org*

Guide to the Courts editorial committee:

Abigail Houle, AmeriCorps VISTA, State Bar of Montana

Kendra Nickel, AmeriCorps VISTA, Supreme Court Commission on Self-Represented Litigants

Brenda Wahler, Chair, State Bar of Montana Law Education & Information Committee

Judy Meadows, Director, State Law Library of Montana

Michele Snowberger, Judge, Belgrade City Court

Christopher Manos, Executive Director, State Bar of Montana

Contributing writers:

Maylinn Smith, University of Montana Indian Law Professor

Eduardo Capulong, UM Law Mediation Clinic Professor

Jeffrey Kushner, Drug Court Coordinator, Montana Office of the Court Administrator

Robert Peake, Bureau Chief, Montana District & Youth Court Services

Carol Brown, State Dept. of Natural Resources & Conservation Adjudication Quality Control

Colleen Coyle, Senior Water Master, Montana Water Court

Timothy Bechtold, Chair, State Bar of Montana Federal Practice Section

Contributing editors:

Ann Gilkey, Legal Counsel, Montana Office of Public Instruction

Charles Wood, Communications Director, State Bar of Montana

Janice Doggett, Equal Justice Coordinator, State Bar of Montana

Joseph Sullivan, Attorney, Great Falls

Joan Jonkel, Attorney, Missoula

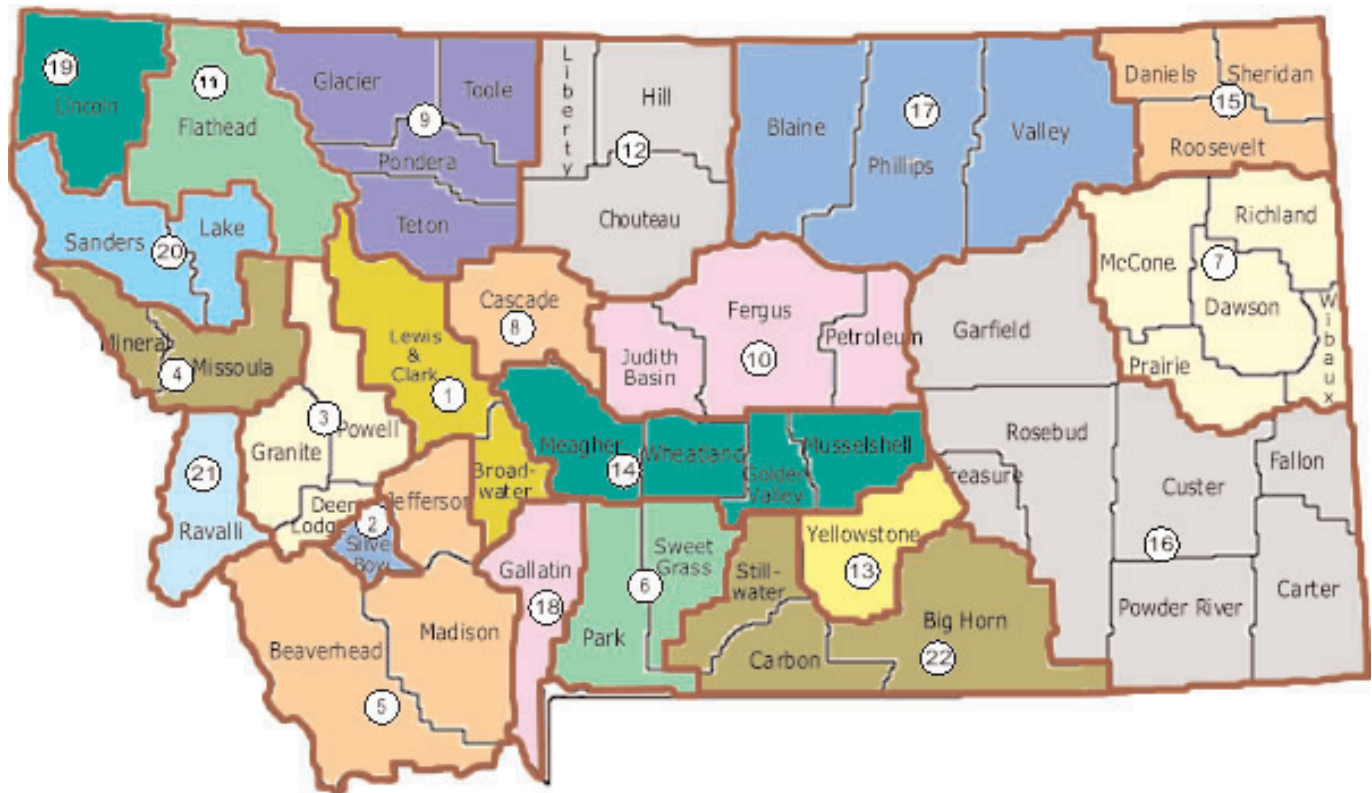
Richard Volinkaty, Attorney, Missoula

Lisa Mecklenberg Jackson, Attorney, Helena

Ronald Youde, Attorney, Billings

Molly Reader, Attorney, Bozeman

NOTES



State of Montana's judicial districts (for state district courts)

To find the address and phone number of the court you are looking for, go to:

<http://courts.mt.gov/locator/default.mcpx>

and simply click on the judicial district number or the county the court resides in.

IMPORTANT NOTE: The information in this Guide to the Courts is a summary of a few of Montana and federal laws and procedures; it is not meant to be legal advice. To receive legal advice about a situation that affects you, consult an attorney.
